

EXECUTIVE SESSION

PERMANENT SELECT COMMITTEE ON INTELLIGENCE,
U.S. HOUSE OF REPRESENTATIVES,
WASHINGTON, D.C.

INTERVIEW OF: MARY MCCORD

Wednesday, November 1, 2017

Washington, D.C.

The interview in the above matter was held in Room HVC-304, the Capitol, commencing at 11:12 a.m.

Present: Representatives Conaway, Gowdy, Stefanik, Schiff, Himes,

[REDACTED]

Carson, Speier, Quigley, Swalwell, and Heck.

[REDACTED]

Appearances:

For the PERMANENT SELECT COMMITTEE ON INTELLIGENCE:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

For MARY MCCORD:

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[REDACTED] Good morning. This is a transcribed interview of Mary McCord.

Thank you for speaking to us today.

For the record, I am [REDACTED] senior counsel at the House Permanent Select Committee on Intelligence for the majority. There are also various Members and staff present who will introduce themselves as the proceedings go on. But before we begin, I wanted to state a few things for the record.

The questioning will be conducted by Members and staff present. During the course of this interview Members and staff may ask questions during their allotted time period. Some questions may seem basic, but that is because we need to clearly establish facts and understand the situation. Please do not assume we know any facts you have previously disclosed as part of any other investigation or review.

This interview will be conducted at the Top Secret/SCI level.

During the course of this interview we will take any breaks that you desire.

We ask that you give complete and fulsome replies to questions based on your best recollections. If a question is unclear or you're uncertain in your response, please let us know. And if you do not know the answer to a question or simply cannot remember, just say so.

You're entitled to have counsel present for this interview, and I see that you've brought them. At this time, if counsel can make their appearances for the record.

MR. PROBER: Raphael Prober, from Akin Gump.

[REDACTED]

[REDACTED] MS. CICCONI: Martine Cicconi from Akin Gump.

[REDACTED] Thank you.

The interview will be transcribed. There is a reporter making a record of these proceedings so we can easily consult a written compilation of your answers. Because the reporter cannot record gestures, we ask that you answer verbally. If you forget to do this, you might be reminded to do so. You may also be asked to spell certain terms or unusual phrases.

Consistent with the committee's rules of procedure, you and your counsel, upon request, will have a reasonable opportunity to inspect the transcript of this interview in order to determine whether your answers were correctly transcribed. The transcript will remain in the committee's custody. The committee also reserves the right to request your return for additional questions should the need arise.

The processes for the interview is as follows. The majority will be given 45 minutes to ask questions and the minority will be given 45 minutes to ask questions. Immediately thereafter, we will take a 5-minute break, should you desire, after which time the majority will be given 15 minutes to ask questions and the minority will be given 15 minutes to ask questions. These 15-minute rounds will continue until each side has exhausted its questioning.

The timing for these rounds will be adhered to by all sides, with no extensions being granted. And time will be kept for each portion of the interview with warnings given at the 5- and 1-minute mark respectively.

To ensure confidentiality, we ask that you do not discuss the interview with anyone other than your attorneys. And you are reminded that it is unlawful to deliberately provide false information to Members of Congress or staff. And

[REDACTED]

lastly, the record will reflect that you're appearing voluntarily for this interview, which will be under oath.

Ms. McCord, if you could raise your right hand to be sworn.

[Witness sworn.]

██████████ Thank you.

And just a reminder, when speaking, please make sure the microphone is on with the green light so that the reporter can transcribe it.

Over to you, Mr. Chairman.

MR. CONAWAY: Thank you for being here this morning.

MR. GOWDY: Thank you, Mr. Chairman. Thank you on behalf of all of us for being here this morning.

My name is Trey Gowdy, I'm from South Carolina. Tom Rooney is from -- oh, sorry.

MR. ROONEY: I think he wanted to say something.

MR. PROBER: We can go when you are through.

MR. GOWDY: No. Heavens, no. You go now. You're being paid more by the hour than I am, you go.

MR. PROBER: Thanks very much. I just wanted to run through a couple of housekeeping things before we get started.

As everyone knows, and as I've communicated to staff on both sides, Ms. McCord's happy to be here and to answer the questions. I just want to make sure that we're all being mindful of her role as a lawyer and the attendant obligations there as we are having the conversation. I don't envision any issues arising, but I wanted to make sure to flag that to the extent anything comes up in that regard.

And then also, of course, open matters and any sensitivity around that,

should any issues arise, I just wanted to flag that as we're getting going.

I also wanted to mention, consistent with the committee's rules and my conversations with staff on both sides, it's certainly our understanding and expectation that this will remain confidential. But I would just ask that to the extent any piece of this does not remain confidential, and, again, it's our hope and expectation that it will, that the NDA that we and Ms. McCord signed this morning does not present an issue with regard to nonclassified information if there's a belief that less than the entire context is being provided.

And, Ms. McCord, I know there are no documents that you're intending to use today. This is obviously based on recollection, some events going back roughly a year ago or more.

Ms. McCord has spoken with the Special Counsel and also with the Senate and is relying on her memory here. But I just want to make clear that there are a lot of dates involved and she doesn't have the benefit of her files or her notes as we're getting going.

And the last piece is, I wanted to mention that we let the Department know that she would be coming in and doing this interview.

MR. GOWDY: Very well.

MR. PROBER: Thank you.

MR. GOWDY: Ms. McCord, the committee is looking at four things, four areas of jurisdiction. What did Russia do with respect to the 2016 election cycle? With whom, if anyone, did they do it? What was the U.S. Government's response? And the fourth tranche for purposes of today would be the issue of maskings and unmaskings, and then the dissemination of classified information. So our questions will focus on the first couple of those prongs.

But before we get into that, 2015, 2016, what was your title, what was your role and responsibilities at the Department?

MS. MCCORD: So I came over to the National Security Division at the Department from the U.S. Attorney's Office in D.C. in the spring of 2014, as the Principal Deputy Assistant Attorney General. That was a career position. And I remained career throughout my tenure at the National Security Division.

So in 2015 and 2016 until October, I was the Principal Deputy. In October of 2016, when John Carlin, then the Assistant Attorney General, departed the government, I became the Acting Assistant Attorney General, but still held my title as Principal Deputy.

So in the role both as Principal Deputy and as an Acting Assistant Attorney General, I had responsibility, of course, when John was there, with John, Mr. Carlin, for supervising the 350-plus attorneys and staff in the division, and that covered areas of counterterrorism prosecutions, counter-espionage and export control prosecutions, national security cyber prosecutions, the Office of Intelligence, which is where all of the work in front of the Foreign Intelligence Surveillance Court is done, and also the law and policy shop, which is a group of lawyers that did policy work, to include proposed legislation, working with folks on Capitol Hill on testimony and other things on national security-related issues, authorities -- intelligence authorities.

And also those were the lawyers who helped prepare me and Mr. Carlin, the Deputy Attorney General, and the Attorney General for National Security Council meetings on issues of national security across a wide spectrum.

MR. GOWDY: From time to time at least some folks in the media and even of us that aren't experts like you are will draw a distinction between

[REDACTED]

counterintelligence investigations and terrorism or criminal investigations. Is that a distinction that you draw? And if so, is there a difference in the way that you would investigate or manage those categories of cases?

MS. MCCORD: There is a distinction. A criminal investigation is one where usually from the beginning there is -- reason to believe, the crime's been committed. And so from the beginning of the investigation the goal is to determine whether there is a sufficient quantum of evidence to charge someone with a criminal offense.

A counterintelligence investigation -- and usually the goal in a criminal investigation is to get from that starting point to a decision about whether the evidence is there and, you know, as expeditiously as possible, consistent with the rule of law.

In a counterintelligence investigation, many of these are not with an eye toward any types of criminal charges whatsoever. It's in order to obtain intelligence collection and to determine -- and this might be counterintelligence investigations regarding potential intelligence officers here in the United States or elsewhere who are trying to obtain information across a variety of different issues to share with their own -- with their own governments.

And so, these are oftentimes -- most times, I would say -- not with any kind of intent or objective of reaching a criminal charge. And so, these might remain open for years.

MR. GOWDY: Did you have a role or did the Department have a role, if you know, in investigating the intrusion into the DNC server whenever that may have taken place?

MS. MCCORD: Yes. So it was primarily through the Federal Bureau of

[REDACTED]

Investigation, which, of course, is part of the Department. And they were involved in that from a very, you know, early stage.

MR. GOWDY: Would you have also been involved in that?

MS. MCCORD: So I was briefed on that from time to time. I can't recall the first briefing. And then of course that issue also became an issue that was of concern to the entire, you know, National Security Council and the National Security Council staff.

And so in addition to the FBI's investigative role in that matter, there was also, you know, interest across the National Security Council in what did happen and what should the government's response be, what should the U.S. response be.

MR. GOWDY: Would that have fallen more in the counterintelligence or the criminal side of the ledger or both?

MS. MCCORD: So the FBI would have been looking at it for both, counterintelligence purposes and to try to determine if we could attribute the intrusion to any individual that could be potentially charged. So they were, you know, focused on both of these things.

In terms of the National Security Council and, you know, the different members and different departments, their work wouldn't have been focused on, you know, a criminal investigation, it was focused on determining who was responsible and then how should the U.S. respond to them.

MR. GOWDY: Would Bureau agents ever come to you for advice or counsel about how to access evidence or whether or not you had enough probable cause to access evidence?

MS. MCCORD: I guess I would need some clarification on what you mean

by access evidence.

MR. GOWDY: Search warrant.

MS. MCCORD: Well, obviously they -- I shouldn't say obviously. The Bureau would come to a prosecutor for a search warrant. And so if it is a national security matter that is reporting up through the National Security Division, they would typically be working with not only a lawyer either in counterterrorism section or our counterintelligence and export control section -- we have attorneys in both -- but also usually with an assistant United States attorney at one of the U.S. Attorney's Offices in the country that would have, you know, jurisdiction over the event.

And that's because a process like a search warrant, we would -- we at the National Security Division -- would need to be using -- have an open case and take that to a judge and we would work with an assistant U.S. attorney.

MR. GOWDY: Confusion is probably too strong a word, but there is a lack of clarity, at least on some of our behalfs, of whether or not the U.S. Government had access to the DNC server during the pendency of this investigation. Do you know whether or not they did and whether or not any U.S. Government entity sought access to the server?

MS. MCCORD: I do not know the answer to whether the Bureau or other U.S. Government entity had access to the server. What I'm aware of with regard to the Bureau's investigation is that from an early point in time they reached out to officials at the DNC to make them aware of intrusions that had taken place and they did that over a series of different contexts, without getting a lot of -- cooperation is maybe too strong of a word -- but without getting -- making a lot of progress in terms of attention to the issue.

MR. GOWDY: Well, every now and again law enforcement agencies will ask for access to what they perceive to be evidence. And then when they ask and don't like the answer, they'll resort to a legal process to access it. Do you know whether or not they saw the search warrant, discussed one with you, or did they just ask for it?

MS. MCCORD: For --

MR. GOWDY: To the server.

MS. MCCORD: For access to the server? They did not discuss that with me.

MR. GOWDY: With respect to whether it's Mr. Podesta's email or whether it's the DNC server, for those of us that were homicide prosecutors and not other, more thoughtful, smart stuff, is it a crime to access someone's server and to intrude in someone's server? Are there potential crimes that would have been committed in connection with that?

MS. MCCORD: There are computer crimes that involve unauthorized access to, you know, servers, computers, other types of cyber.

MR. GOWDY: What are the elements of those offenses? Do you recall what --

MS. MCCORD: I don't have the statute book in front of me.

MR. GOWDY: Would that be true for both an email account and a server? Would they both be --

MS. MCCORD: I believe both are those that could be the subject of unauthorized access that could give rise to potential charges.

MR. GOWDY: All right. So if you've answered this, I apologize, but I want to ask it again. Were there open criminal investigations with respect to the breach

[REDACTED]

of the email or the server?

MS. MCCORD: At what point in time are you --

MR. GOWDY: At any point in time.

MS. MCCORD: So there were -- the FBI from the time I think it first learned of the breach into the server began trying to ascertain who had -- who was responsible for that intrusion. And that -- I can't recall exactly when I became aware of that, and I don't recall us being specific as to which bucket the FBI had put that in, counterintelligence versus criminal at the beginning.

But I will say that certainly it was always our hope and objective -- when I say our, I mean at the National Security Division, working with the Deputy Assistant Attorney General who was responsible for our cyber investigations -- it was certainly always the hope that it would get to a point of confidence in who in particular was responsible for that.

MR. GOWDY: In 2015 or 2016, at any point while you were there, do you recall either counterintelligence or criminal investigations into either of the major political candidates and/or their campaigns?

MS. MCCORD: There -- no.

MR. GOWDY: Do you recall either counterintelligence or criminal investigations into anyone, whether formally or informally connected with either of the two major political candidates' campaigns.

MS. MCCORD: Yes.

MR. GOWDY: What can you tell us about that?

MS. MCCORD: So beginning in -- although I was not aware of this at the time -- but beginning in the summer of 2016 is when the FBI began investigating some individuals who had been affiliated with the Trump campaign as

[REDACTED]

[REDACTED]

counterintelligence investigations, not criminal investigations. And that proceeded throughout the fall and, of course, after the election and into this year, as you're aware.

At some point, and I don't know, you would have to talk to the Bureau about how they keep track of their own records and the way they open different investigations. They can open as a CI or counterintelligence investigation, open as a criminal investigation, and they can sometimes merge these. And I can't tell you when these would have been merged. I can say that by early 2017, I would say, is when there were more discussions about potential criminal, you know, looking at this as criminal investigations in addition to counterintelligence investigations.

MR. GOWDY: I think if I wrote it down right, you said individuals. Do you recall any of the names of people, either formerly or informally, connected with the Trump campaign?

MS. MCCORD: Yes. [REDACTED]

[REDACTED]

MR. GOWDY: And you said these would have been CI investigations at the time, not necessarily criminal.

MS. MCCORD: So the way it was explained to me by the Bureau was that

[REDACTED]

[REDACTED]

MR. GOWDY: Before we get to those individuals, who with the FBI would you have -- who would have briefed you, who would you have worked -- which agent would you have worked most closely with?

MS. MCCORD: So recall, I was the -- by the time we were receiving any

[REDACTED]

[REDACTED]

briefings on this -- this aspect, the CI aspect, as opposed to the cyber aspect of this -- I was the Acting Assistant Attorney General. So I was not the one dealing on a day-to-day basis with the Bureau. So I -- my counterparts at the Bureau often were either Andy McCabe or on cyber or CI matters Bill Priestap -- not cyber, but on CI matters Bill Priestap. On the counterintelligence side it would have been Carl Ghattas -- I mean on the counterterrorism side it would have been Carl Ghattas.

The briefings -- we began to have more regular -- well, regular briefings on the CI investigations at the beginning of this calendar year, in January, and had really sort of our first soup-to-nuts kind of briefing either the first Friday or the second Friday in January. I just can't recall anymore which it was. And we would have these weekly or biweekly, up really until about the time I departed.

And those were usually done not by Mr. McCabe, but by Mr. Priestap and agents and supervisory agents and I think the deputy AD, or maybe it was the AD, I'm not sure, Pete Strzock -- Pete Strzock. And then sometimes there would be someone from the FBI's general counsel present at the briefings.

MR. GOWDY: [REDACTED] Would those have been opened as separate matters or one matter?

MS. MCCORD: You'd really need to talk to the Bureau about that. [REDACTED]

[REDACTED]

[REDACTED]

MR. GOWDY: In what way? [REDACTED]

[REDACTED]

[REDACTED]

MS. MCCORD: Well, certainly by early January there was the potential

[REDACTED]

with respect to Michael Flynn to have potentially violated a criminal statute in light of his conversations with the Russian Ambassador Kislyak in late December and that was discussed with the Bureau.

[REDACTED] No one was putting their fingers on any particular criminal statutes with respect to sort of collusion at that point. It was still an investigation into exactly what contacts there had been and how high up these went and what that might, you know, what that might look at.

So I can't, you know, I can't pinpoint a particular time, you know, reflecting back on it when any decision was made this is now criminal versus this is now -- this is still CI.

MR. GOWDY: What's the difference to you between the word collusion and conspiracy?

MS. MCCORD: Well, collusion is a word that's been used out in the public to refer to this investigation. It's, of course, not a crime itself. Conspiracy is a crime. I don't know what the elements of collusion are because it's not a crime, but I think people use it in a way that sounds very much like conspiracy.

MR. GOWDY: When you use it, is that how -- we used to used the word conspiracy. Is collusion tantamount to conspiracy, is it a synonym, are there distinctions?

MS. MCCORD: I can't answer that because I can't tell you what everyone who's used that word in the last year is thinking when they use the word. I can tell you from a --

MR. GOWDY: How about you, when you use it?

MS. MCCORD: From a criminal investigative perspective, I would use the word conspiracy.

MR. GOWDY: All right. For purposes of you and I, to the extent I can remember I'm going to use the word conspiracy instead of collusion. Although I'm going to have to backtrack because you used the word collusion.

Investigating collusion, between whom and to do what?

MS. MCCORD: So as you recall, we discussed that this was opened as a counterintelligence investigation initially. So I think that's part of that, and, frankly, just what's been in the media is why a lot of people have sort of shorthanded this to refer to Russian collusion.

And for counterintelligence purposes, when the objective is not necessarily to lead to criminal charges, words like that could be used in that community to determine whether there was what would be commonly referred to as collusion, I think.

And so a lot of, I think, what the Bureau was looking at when it first opened was to determine, you know, what efforts, if any, were made to anyone associated with the Trump campaign to collude with, conspire with those within the Russian administration to influence the election. And so that's the kind of context I think that I'm using that term.

When we talk about conspiracy, we're talking -- to me, when I talk about conspiracy, I'm talking about is there evidence of a conspiracy that could lead to criminal charges.

And just to go back to, I don't know if this is to correct or clarify an earlier response, in terms of the timing, when the first -- in the course of our briefings on these matters early in 2017, when it became clear that there could be some

[REDACTED]

potential criminal culpability or at least worth investigating and criminal tools like subpoenas were going to be used, then, of course, you need to open a criminal investigation because you have to have a grand jury open in order to issue a subpoena.

MR. GOWDY: There are four pivot points, probably more than four, but four that I wrote down. The reason that I started with the intrusion into the DNC server and Podesta's email is that's a pretty clear point for which there could have been conspiracy or collusion.

MS. MCCORD: Uh-huh.

MR. GOWDY: There's the dissemination of whatever would have been gathered from that intrusion.

MS. MCCORD: Uh-huh.

MR. GOWDY: And then I guess there's everything else. And I think you used the phrase influence the election.

MS. MCCORD: Uh-huh.

MR. GOWDY: Was there an investigation, evidence -- which is a word I like, other people like the word intelligence -- of any member of the Trump campaign conspiring with the hackers of the DNC server and the Podesta email?

MS. MCCORD: At the time I left, that's something that was still under investigation.

MR. GOWDY: It was still under investigation whether or not the Trump campaign assisted in the actual intrusion?

MS. MCCORD: Well, I mean I guess you could put it that way. What I -- what I -- the way I think of it is, it was an active investigation into attributing the responsible party for the intrusion and making attribution to the responsible party

[REDACTED]

[REDACTED]

for the dissemination of that information through the Guccifer 2.0 persona.

MR. GOWDY: But you'd agree those are two separate pivot points. There is the intrusion – and I could have had nothing to do with the intrusion, but taken full advantage of the fact that somebody else committed a crime.

MS. MCCORD: That's true.

MR. GOWDY: All right. So with those two separate pivot points, and I think you testified that the matter was still under investigation when you left, what evidence, regardless of source, regardless of credibility, believability, existed that any member of the Trump campaign conspired with anyone else to intrude into either the DNC server or the Podesta email?

MS. MCCORD: I can't recall if there was information -- any information or evidence at the time I left about conspiring to take part in the actual intrusion.

MR. GOWDY: How about the dissemination of information gathered during the intrusion?

MS. MCCORD: I can't refer you to any evidence of that as well.

MR. GOWDY: All right. So there's the -- we'll call it a crime, the crime of the intrusion.

MS. MCCORD: Uh-huh.

MR. GOWDY: Would it be a crime to disseminate information gathered as a result of someone else's crime?

MS. MCCORD: It depends. It depends. And maybe you've tried to embed this in your question. But it depends on what that person who is doing the disseminating, what their knowledge is about and any wittingness or, I guess, complicity in the actual intrusion. But I think you've tried to bake into your question that there wouldn't be any. And I guess knowledge of whether

[REDACTED]

information -- you know, I'm taking it out of the context that we've been talking about, just in a more generic context -- and knowledge about whether that information is classified or not.

If you think about a traditional sort of leak case, for example, and if you have just someone who is the recipient of leaked information that didn't do anything to elicit a leak of that information, there's a different question about publishing it. That's a very different question than complicity for leaking it. So it is a little bit similar, a little bit analogous.

MR. GOWDY: I've been gone so long, I don't remember the answer to this question, but can you be guilty of a conspiracy when the act took place before the conspiracy was formed?

MS. MCCORD: Not for the conspiracy to commit that act.

MR. GOWDY: Is misprison of a felony a possible charge if you after the fact knew about a crime taking place and failed to report it or does that require you having a duty to report it?

MS. MCCORD: I don't -- I'm not competent to answer that question right now --

MR. GOWDY: I'm not either. I'm just trying to figure out what potential criminality could exist if Mr. Conaway hacked into Mr. Rooney's email and I had nothing to do with it, but I thought, this is some interesting stuff, I'm going to participate in the dissemination of it. I'm just trying to figure out what the range of possible criminal conduct could be for that. Can you think of anything?

MS. MCCORD: I'm not -- I'm just not prepared today to tell you every -- every possible crime that there could be, because it's so factually specific. If what you're -- never mind.

MR. GOWDY: Well, I'm actually not trying to make it complicated. "Influencing the election" is kind of the phrase that we hear a lot. Is that a crime? Is working with a foreign government to influence an election a crime?

MS. MCCORD: There could be different crimes that come from that.

MR. GOWDY: And that's what I'm getting at. What could they be?

MS. MCCORD: Well, again, I would go back to what complicity there might have been in the obtaining of the information, what sources might have been used, wire sources or others to convey the information, whether it was done fraudulently based on who you claim to have been in conveying the information or what the source of that information is. So I think there's a variety of things to be looked at.

MR. GOWDY: Do all of those assume some complicity in the underlying act?

MS. MCCORD: No. I don't believe they would have to assume complicity. If by underlying act you mean the intrusion --

MR. GOWDY: Access, yeah.

MS. MCCORD: -- then no. But as you do know, because I know you were also were a Federal prosecutor, all criminal offenses do require knowledge and most require an intent except for strict liability crimes.

MR. GOWDY: All right. Walk us through the application process for a FISA warrant.

MS. MCCORD: So I should just clarify, I will do that, but I will also -- I want to make sure that you all are aware that because I was a career DOJ employee, even when I was the Acting Assistant Attorney General for National Security, I did not have the authority by statute to sign FISA applications, because I was not

[REDACTED]

Presidentially appointed and Senate confirmed. So although I was the head of the National Security Division for 6 months, I did not sign FISAs. Those did have to go to someone who was Presidentialy appointed and Senate confirmed and statutorily given the responsibility and authority to sign those.

But typically when the FBI had information that it had put together into an application to seek a FISA, it would work with attorneys in the Office of Intelligence at the National Security Division to make sure -- who would go through the FISA application and work with the agents to determine whether it was sufficient and had necessary probable cause and met the other necessary criteria under the FISA statute.

Sometimes they would be turned away, if those requisite standards couldn't be met. Other times modifications might be made. Sometimes it was a process that would go on for weeks or even months to, you know, put together the entire FISA application.

Once the attorney in the Office of Intelligence was satisfied that the application met the statutory requirements, that would be approved by various supervisors within the Office of Intelligence, to include the Deputy Assistant Attorney General for the Office of Intelligence. And then it would go to whomever the signer was going to be.

So when John Carlin was still the AAG, he would sign, unless he was out of town and unavailable, in which case it would go up to the Deputy Attorney General. And if that person was unavailable, it would go to the Attorney General.

MR. GOWDY: [REDACTED]

[REDACTED]

MS. MCCORD: [REDACTED]

[REDACTED]

MR. GOWDY:

MS. MCCORD: There were not.

MR. GOWDY: Do you recall if there were any FISA applications with respect to Carter Page?

MS. MCCORD: There was.

MR. GOWDY: How many?

MS. MCCORD: Just -- well, there was an application that was approved in the fall of 2016. And then it was reapproved after 90 days. It was extended in, I believe, January of 2017.

MR. GOWDY: Is there both a formal and an informal declination or rejection policy with the court? Will they allow you to present something informally and the judge advise you whether or not you have enough? Or is it all a formal application with a formal acceptance or rejection?

MS. MCCORD: There are times that I know we've sent over read copies so that the staff can start to get familiar with the read copy. And staff would advise our attorneys if they thought there might be any issues that would cause concern before a formal application went over.

But I don't know of any process where the actual judge, the court would, you know, informally say this is not going to cut it, resubmit it. There were -- like I said, sometimes there would be dialogue at the staff level.

MR. GOWDY: Were there any --

[Discussion off the record.]

MR. GOWDY: Do you know whether there were any rejections for any of

[REDACTED]

the applications with connection to Carter Page?

MS. MCCORD: There were not.

MR. GOWDY: What --

MS. MCCORD: At least I'm not aware of any. I don't believe there were.

MR. GOWDY: And this application, the standard approval for having it approved is what, probable cause?

MS. MCCORD: Yes.

MR. GOWDY: And that would manifest itself in what, an affidavit?

MS. MCCORD: Yes.

MR. GOWDY: Signed by whom?

MS. MCCORD: By whichever agent, Bureau agent.

MR. GOWDY: By a Bureau agent.

MS. MCCORD: Yes.

MR. GOWDY: Do recall which Bureau agent signed the FISA applications in Carter Page's case?

MS. MCCORD: I don't.

MR. GOWDY: Were you part of the drafting of any part of that application?

MS. MCCORD: Not the drafting, no.

MR. GOWDY: Reviewing it?

MS. MCCORD: I saw one of the earlier versions that then went through a number of edits and clarifications and, you know, questions that DOJ had of the Bureau, information, you know, for additional information and additional clarification. I don't believe I ever read -- I know that I never read the final version that went for approval. I did see an earlier version.

MR. GOWDY: To the extent you can recall, what was the probable cause

[REDACTED]

[REDACTED]
in support of the application, Carter page's case.

MS. MCCORD: So I am -- this is over a year ago, and I cannot recall with any great specificity. I do know that it relied on information from Mr. Steele, Christopher Steele, [REDACTED] I do recall that was an issue that we discussed, that some of the -- you know, to make it very clear to the court that for [REDACTED]
[REDACTED]
[REDACTED] Mr. Steele had had a relationship with the Bureau and they had found him to be credible in the past.

There was also other information that was included in that affidavit, which I don't have good recall on, but it was not solely Mr. Steele's information or the information [REDACTED]

MR. GOWDY: Can you recall what percentage of the affidavit was related to Mr. Steele and what was related to the stuff you cannot recall? I'm not asking you to recall something you can't recall. Just from a percentage standpoint, was it one or two sentences provided by Mr. Steele or 50 percent of the application.

MS. MCCORD: It wasn't one or two sentences, but I can't put a percentage on it.

MR. GOWDY: Who in the Bureau told you that Mr. Steele had proven to be a reliable informant in the past?

MS. MCCORD: This, I believe, was in the affidavit. I also -- I also had had conversations with at least one or -- sometimes it's hard for me to remember whether a conversation was directly with someone at the Bureau or whether it's something I learned from someone else at NSD that they had talked to the Bureau about.
[REDACTED]

But I do believe at one point I had a conversation -- I believe with Andy McCabe -- about the fact that Christopher Steele had been -- was, of course, a [REDACTED] but had been a previous FBI source and someone they'd found to be credible.

MR. GOWDY: Do you recall if the Bureau let you know whether Mr. Steele was acting in his capacity as a Bureau informant or, I don't know, hypothetically working for a private entity when he gathered the information?

MS. MCCORD: So I learned at some point -- and I can't recall exactly when I learned it. In other words, I don't know if I learned this before the Carter Page affidavit or whether I learned it after.

But I learned that Mr. Steele had originally -- had come to the Bureau with information that he had gathered originally because he had been contracted by -- to do opposition research -- contracted by a Republican source to do opposition research -- I believe this to have been during the primaries -- on Mr. Trump.

And that later, after it became clear that Mr. Trump was going to be the candidate for the Republicans, that that -- I don't know if it was the same contract was taken over -- but his work continued, now being paid by a Democratic source. And that at some point Mr. Steele came to the Bureau, because he had had a previous relationship with the Bureau, and reported to the Bureau some of the information that he had learned through these other -- through these paid work that he was doing.

I believe I knew that before the Carter Page affidavit or at the time at least of the Carter Page FISA affidavit. What I didn't know is that that had anything to do with a dossier. I hadn't seen a dossier. In fact didn't read the dossier until

[REDACTED]

January of 2017 when Buzz Feed published it.

But I did know that he had come voluntarily to the Bureau with information that he had obtained through his work that he was being paid for, first by Republicans, then by Democrats, as opposition research that he thought the Bureau would be interested in.

MR. GOWDY: I think it was twice you said came to the FBI. Who told you that Mr. Steele came to the FBI?

MS. MCCORD: I believe I learned that from Mr. McCabe and also through Stu Evans, the Deputy AAG for the Office of Intelligence, who would have learned it from someone else in the Bureau. It's possible it was not Mr. McCabe. I have a recollection of a phone call with him about it.

And came is just sort of my word. I don't know whether -- I mean, to the extent that suggests physically walked up, I'm not opining on or recalling, or I'm not sure I ever knew exactly how it was communicated, whether it was an in-person physical visit, whether it was a phone call, or something else.

MR. GOWDY: Do you think it would make a difference in your deliberative process if a previously reliable informant had come to the FBI as opposed to the information being provided by another political party doing opposition research? They strike me as two kind of different analyses.

MS. MCCORD: I mean, certainly in my entire career as a prosecutor up until last May, the source of every piece of evidence I've ever sought to rely on, it was important to me where it came from and whether there was potential -- you know, how credible it was.

And I would factor everything in that I would expect a court to factor in, and that would include: Is it coming from a source that might be biased? Is it coming

[REDACTED]

[REDACTED]

from a source with whom I have a previous relationship and have established reliability before? And all the other facts and circumstances that one would use to assess the reliability of the information.

MR. GOWDY: If that analysis would be true for sources, would it also be true for subsources?

MS. MCCORD: Yes.

MR. GOWDY: Were you able to vet, corroborate, contradict any of the information provided by Mr. Steele [REDACTED]

MS. MCCORD: You're asking me personally?

MR. GOWDY: Yes, ma'am.

MS. MCCORD: That was not -- I personally am not an investigator and wasn't an investigatory agent, so I personally did not corroborate information through other investigations.

MR. GOWDY: From time to time in the old days we would ask law enforcement officers: How do you know that? How did you come into contact with that information? Do you recall asking the FBI: How do you know?

MS. MCCORD: Certainly that was done. Now, recall the conversations are usually going on -- what I know about this is coming to me through those who are responsible for the day-to-day back and forth with the agents. And Stu and I certainly -- Stu Evans certainly talked about questions we had on, you know, the application and questions to go back to the Bureau with. I was not the one doing that.

So when you asked me before did I corroborate, I took that as me personally, Mary McCord, and I did not go and try to do my own investigation and corroborate. These are questions that certainly we were discussing with the

[REDACTED]

Bureau to obtain as much corroboration as possible, recognizing fully that for [REDACTED]

The Bureau continued -- and the standard for that, of course, was probable cause -- the Bureau continued and was continuing up until the point that I left in May to try to corroborate [REDACTED] of Mr. Steele's [REDACTED]

[REDACTED]
MR. GOWDY: If I wrote it down correctly, there was an initial application with Carter Page and then there was one re-up and then a second re-up?
MS. MCCORD: Not before I left, there was just one, because it would have been after 90 days. And so there was just one.

MR. GOWDY: Again, refresh my recollection, you left when?

MS. MCCORD: I left May 12th.

MR. GOWDY: And these applications --

MS. MCCORD: Actually, you know, now that I sit down and think about it, there would have been probably another 90 days passed. I just don't know. I just can't recall whether there was a second re-up. There might have been.

MR. GOWDY: Do you know when the first application was made or approved?

MS. MCCORD: I don't. I remember it being fall, and I can tell you it was not at all when the press reported this. The press, I believe, was reporting a FISA on Mr. Page, like, in the summer, which was not the case at all. I think it was October or November, but I just don't recall specifically.

MR. GOWDY: And these applications are good for 90 days?

MS. MCCORD: Yes.

MR. GOWDY: So if it were -- even it were November, there would be one re-up before you left in May and maybe a second before you left in May.

MS. MCCORD: That's right. So I could be wrong, I could just not be recalling the second. I believe, though, that the first re-up, I believe Deputy Attorney General, then Acting Attorney General Yates was still in the office, which would suggest that it would have been before January 30th, but would have had --

MR. GOWDY: Does there have to be fresh probable cause for a re-up, or what is the standard by which a judge, a court determines whether to reauthorize?

MS. MCCORD: The court would be looking to whether there was still -- there wouldn't have to be fresh probable cause. [REDACTED]

[REDACTED]
[REDACTED] Strictly speaking, there wouldn't have to be for a judge to reauthorize it, but I do recall that there was some of that in this particular case,
[REDACTED]

MR. GOWDY: All right. I'm running short of time. No application for [REDACTED], yes for Page. [REDACTED]

MS. MCCORD: [REDACTED]

MR. GOWDY: All right. I think I have only got a couple of minutes and I'm sure I have got colleagues who want to ask you something.

[REDACTED] There is about a minute left.
MR. ROONEY: Thanks, Mr. Gowdy, for that, yielding. I'll wait until after the minority goes. So I yield.

MR. SCHIFF: Thank you, Ms. McCord, for being here, and thank you for your service to the country.

I just have a few follow-up questions and then some questions on a [REDACTED]

[REDACTED]

somewhat different topic.

I think Director Comey had testified in open session that the DNC had offered essentially the forensic blueprint of their server done by one of the private reputable cybersecurity firms and that was sufficient for what the Bureau's needs were. Do you have any reason to believe that wasn't accurate?

MS. MCCORD: No, I don't.

MR. SCHIFF: Do you know whether the FBI, in fact, even asked for the server or whether what they were being offered was sufficient?

MS. MCCORD: I don't.

MR. SCHIFF: In terms of the potential offenses that may be involved when a foreign government intervenes in our election and the crime of conspiracy, the crime of conspiracy may be related to conspiring to violate certain election laws in that context, is that one of the forms that a conspiracy might take?

MS. MCCORD: Right. I mean conspiracy on its own has to be tied to some other crime, a conspiracy to commit some type of a crime. So that's -- that's one possibility.

MR. SCHIFF: So if a foreign government making expenditures during a Presidential campaign violated U.S. election laws, a conspiracy to work with a foreign government in the provision of that assistance would be a crime as well?

MS. MCCORD: That's right.

MR. SCHIFF: In the circumstances here, whether the campaign was involved in the actual break in of the Democratic Party computers wouldn't preclude it from criminal liability if after the fact it entered into a conspiracy with Russians to make use of the illegally obtained information on Hillary Clinton.

MS. MCCORD: That's correct -- that could be correct, depending on the

[REDACTED]

[REDACTED]

facts.

MR. SCHIFF: And depending on the facts, if the Russians offered assistance to the campaign in the form of stolen emails and the campaign accepted that assistance and the Russians took certain actions to follow through on that agreement, that could constitute the crime of conspiring to violate the campaign election laws.

MS. MCCORD: I think it probably could.

MR. SCHIFF: A number of us sat down with Bill Priestap yesterday. Did you work with Bill during your time at DOJ?

MS. MCCORD: I did.

MR. SCHIFF: And what was his position?

MS. MCCORD: So he was the assistant director over counterintelligence.

MR. SCHIFF: And was he intimately involved in the preparation of the FISA pertaining to Carter Page?

MS. MCCORD: I believe so. I did not have a lot of discussions with Bill Priestap at that time about that, but logically he's the one who would have been -- he was the one in charge of counterintelligence at the time and I'm sure he had great visibility into that.

MR. SCHIFF: And if he had contemporaneous access to the FISA applications and a chance to review them, would his recollection be more fresh than your own about what would be in the FISA application?

MS. MCCORD: Absolutely.

MR. SCHIFF: If it was his view that a substantial part of the FISA application, indeed more than half of the FISA application was based on sources not involving Mr. Steele, would you have any reason to believe that that was

[REDACTED]

[REDACTED]

incorrect?

MS. MCCORD: No.

MR. SCHIFF: Do you know whether information concerning

[REDACTED]

MS. MCCORD: It may have been. I just don't fully recall.

MR. SCHIFF: I want to ask you about your involvement in the investigation vis-a-vis Mr. Flynn, General Flynn.

[REDACTED]

MS. MCCORD: [REDACTED]

[REDACTED]

But in terms of concerns about contacts that might --

MR. QUIGLEY: Excuse me, could I ask if the gentleman will yield just to clarify?

MR. SCHIFF: Yes.

MR. QUIGLEY: If the question be, do you mean the general election? I assume that's obvious, but I want to make sure.

MS. MCCORD: Yes.

[REDACTED]

MR. QUIGLEY: Okay. Sorry.

MS. MCCORD: I believe the piece either came out on the 7th or the 8th. I don't recall exactly. But that's separate from the concerns about his contacts with -- potentially improper contacts with the Russians.

I first became aware of contacts he had with Ambassador Kislyak in early January when Mr. McCabe called me. It was -- I don't remember the exact date, it was that first week -- [REDACTED]



MR. SCHIFF: [REDACTED]



MS. MCCORD: That's correct.

MR. SCHIFF:

MS. MCCORD:

MR. SCHIFF:

MS. MCCORD:

MR. SCHIFF: And as people were scrutinizing within the Bureau

before it was presented to the President, it came to the attention of Mr. McCabe

MS. MCCORD: That's correct.

MR. SCHIFF: And so there was a delay in completing

MS. MCCORD: That's correct.

MR. SCHIFF: And then what happened?

MS. MCCORD: So the first conversation was relatively short because

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MR. SCHIFF: Can I just ask you, I'm sorry, before you get into that. The

MS. MCCORD: That's correct.

MR. SCHIFF: What does that mean in terms of what the President was getting in the interim? That the first [REDACTED] was held off, did it subsequently -- was it subsequently amended that day to include information that might explain it?

MS. MCCORD: It was not. It was pulled back and it was not provided -- at least to the extent I am aware, nothing was then provided to the President that day on [redacted]

[REDACTED]

MR. SCHIFF:

[REDACTED]

MS. MCCORD:

[REDACTED]

[REDACTED]

[12:13 p.m.]

MS. MCCORD: I asked Mr. McCabe for -- and, of course, by this point, it's January. General Flynn has been announced that he will be the incoming national security adviser, and so I asked Mr. McCabe [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

MR. SCHIFF: Do you know what date that would have been?

MS. MCCORD: I don't know what date it would have been. It's early January, within the first 2 weeks of January. I think probably within the first week -- probably within like the first 10 days of January.

The next morning I -- that night, I didn't try to contact the Deputy Attorney General, Sally Yates, because it was in the evening, and I knew I couldn't speak to her. I don't think she was there in the office anymore. And this is not information I could convey over an unclassified cell phone, and I wanted to talk to her in person about it, so I thought I would do that the next morning.

The next morning, I was able to talk to the Deputy Attorney General, Sally Yates. I conveyed to her what Andy had conveyed, plus by then, of course, I had [REDACTED] and shared those with her. She then asked that we request the [REDACTED] which I did, and which ultimately were provided.

MR. SCHIFF: What happened after that in terms of the concerns about General Flynn?

MS. MCCORD: So on January 13, which was a Friday, was one of our

[REDACTED]

[REDACTED]

Obviously, we knew about Carter Page because there had been a FISA. But I had never gotten sort of a full briefing on these counterintelligence investigations and what happened since then.

MR. SCHIFF: And this was a full briefing you were getting from the Bureau?

MS. MCCORD: That's right. So it was -- Bill Priesatep came over, Pete Strzok, and then, I believe, Trisha Anderson from the general counsel's office, and maybe one other person with general counsel.

And they wanted to outline for a few of us in the Department, a very small circle from the Deputy Attorney General's Office, and then my office, sort of like the status of the investigation and what they had done so far.

And the Friday morning of January 13, much to our surprise -- and I didn't even know this. I hadn't seen this come out. But on January 12, in the evening, online, David Ignatius had published a piece that indicated that there had been calls between Ambassador Kislyak and General Flynn about this. But the substance was not in these -- was not in this newspaper article.

We were all pretty shocked. So I learned of that during the briefing when somebody said that -- have you seen the David Ignatius article? And I had not seen it, and that was then made available. And we were all pretty shocked that this would already be in the press.

At any rate, we had our briefing. And then I believe that night -- because

[REDACTED]

this made the press -- I believe Sean Spicer might have been asked about it that night, and indicated that there were no -- there was no discussion of sanctions.

But more concerning for our purposes was that on Sunday, the 15th, Vice President-elect Pence went on Face the Nation and was asked about these conversations, and specifically said -- although I'm paraphrasing here, I don't have it in front of me -- that he had discussed this with General Flynn, and General Flynn had assured him that the conversations were not about the expulsion of diplomats or the Russian sanctions.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

MR. SCHIFF: And when -- what decision was made on the basis of that, and who made the decision to brief the White House?

MS. MCCORD: So we began discussing this within DOJ, and several of us felt strongly that we should brief someone in the White House, let someone know that this statement that the Vice President-elect had made was not true.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

We also had concerns that the incoming National Security Advisor appeared to have lied to the incoming Vice President that we thought someone in the White House should be aware of.

Ultimately, the decision was made by Deputy Attorney General Yates to advise the White House. And we determined, after some discussion, that the best point of entry -- because we didn't have established relationships with people over there yet. It was -- they hadn't taken office yet -- was the incoming -- White House counsel, Don McGahn.

MR. SCHIFF: And do you know before you would go over to meet with Don McGahn whether anyone else at the Bureau or Justice Department had informed the White House of the Flynn conversations?

MS. MCCORD: I believe Director Comey had advised, I don't know exactly who, a very small group, perhaps just the President.

MR. SCHIFF: And what's the basis of your belief that the Director had informed the President?

MS. MCCORD: So when I -- after I learned the information in more specific detail from Mr. McCabe, and did not try to reach Ms. Yates that night, decided to wait until the next morning, unbeknownst to me, she was summoned to the White House for a meeting the next morning.

And in a pull-aside after that -- I believe to discuss the Intelligence Community report, which by then had just come out. And there was an unclassified report, there was a classified report, and then there was an even higher level of classification of that report.

[REDACTED]

And so she'd been summoned over to a meeting of the National Security Council to discuss that. And there was a pull-aside -- I learned when I then went to talk to her after she got back from that meeting that there had been a pull-aside after that with Director Comey and the President where they had alluded to this

[REDACTED]

And, of course, Ms. Yates was in the unfortunate position of not knowing what they were alluding to because I hadn't briefed her yet. So that was my fault. I was very apologetic that I hadn't had an opportunity to tell her before she was in that pull-aside meeting.

MR. SCHIFF: And that pull-aside was Sally Yates, Director Comey, and the President?

MS. MCCORD: That's who I recall her saying was there. It's possible there was somebody else. I mean, I wasn't there.

MR. SCHIFF: And the general thrust of what you were informed is that they informed the President, to some degree,

[REDACTED]

MS. MCCORD: So the way I took it from Ms. Yates is that Director Comey had already informed the President about it. And the President and Director Comey were then referring to it, which is why she was a little bit in the dark because she hadn't been informed of it yet. So she was gleaning from the conversation what may have happened, and then I was able to fill it in for her.

MR. SCHIFF: And do you know what date that was?

MS. MCCORD: I don't have the date.

MR. SCHIFF: Do you know whether that took place before the Ignatius column?

MS. MCCORD: Yes, it did take place before the Ignatius column.

MR. SCHIFF: So the President was informed [REDACTED] that General Flynn had talked with Kislyak about sanctions before it appeared in the press?

MS. MCCORD: That's right.

MR. SCHIFF: So at least in theory, the leak of that information could have come from the White House?

MS. MCCORD: At least in theory.

MR. SCHIFF: Go further, if you would. After you did discuss it with Sally Yates then what was the next step in terms of notifying the White House more formally?

MS. MCCORD: So when we then began -- so at this point in time, this is still President Obama in the White House. And so we then began discussing -- it was not until after incoming Vice President-elect Pence went on Face the Nation that we discussed advising the incoming White House. And --

MR. SCHIFF: Oh, okay. Thank you, that's a helpful clarification. So the President you're talking about is President Obama at this point?

MS. MCCORD: Yes. Yes.

MR. SCHIFF: Okay. Thank you.

MS. MCCORD: The David Ignatius article was on the 13th. That pull-aside was before that, right after I learned the information. And it was clear that from -- I shouldn't say clear because I wasn't in the room, but based on what I heard from Deputy Attorney General Yates, it seemed like Director Comey had advised President Obama of something.

I don't know the extent because she didn't fully understand what they were

[REDACTED]

referring to because I hadn't briefed her yet. And when I briefed her on what I had learned from Deputy Director McCabe, then it made sense to her that that must have been what they were referring to.

But I don't know -- I can't tell you the extent of what Director Comey briefed to the President, because I wasn't there and also because Deputy Attorney General Yates also didn't know exactly what had been briefed, if that makes sense.

MR. SCHIFF: Yeah.

MR. PROBER: Just to put a point on that, and I know this is clear from the discussion, but this was Ms. McCord's recollection and perception of the conversation with Ms. Yates --

MS. MCCORD: Right.

MR. PROBER: -- of her recollection and perception --

MS. MCCORD: Yeah.

MR. PROBER: -- so multiple levels of potential ambiguity.

MR. SCHIFF: And so tell us when then the notification was made to the incoming administration.

MS. MCCORD: So after Vice President-elect Pence did his interview on Face the Nation that's when we began discussing trying to figure out a point of contact in the incoming administration to convey this to.

We were not really able to accomplish that before the inauguration. So the week after the inauguration, Ms. Yates made the decision that we would go and brief Don McGahn. And so she reached out to ask him if he would take an appointment, and on Thursday the -- is it the 26th? -- the Thursday after the inauguration, we went to Mr. McGahn's office and did a briefing that is

[REDACTED]

substantially what Ms. Yates has testified about previously.

MR. SCHIFF: And was Mr. McGahn the only one present from the White House for the briefing?

MS. MCCORD: No. There was Mr. McGahn and James Burnham, who I was introduced to for the first time that morning or afternoon. I think it was morning.

MR. SCHIFF: What was his position?

MS. MCCORD: He was in the White House counsel's office. I don't remember what his title was. I mean, he is an attorney, but I don't recall -- I think deputy White House counsel. So it was Mr. McGahn, Mr. Burnham, myself, and Ms. Yates.

MR. SCHIFF: And what was White House counsel's reaction when you informed them of the conversations Flynn had had with the Russian ambassador?

MS. MCCORD: I think he seemed very surprised. They both seemed very surprised. They -- you know, it was not a long conversation, I'd say about 15 minutes. Ms. Yates did the talking. I interjected maybe once to clarify something, and I can't even recall at this point what it was.

She let them know that we were there because we, you know, had heard what the Vice President-elect had said on national television in response to the questions about the conversations between General Flynn and Ambassador Kislyak

[REDACTED] And we explained the reason, because [REDACTED]

[REDACTED]

of the potential compromise as well as that it appeared that Vice President-elect Pence had been given untrue information by General Flynn.

We did indicate we had no reason to believe that the Vice President-elect was witting of that. Well, at this point, he is not the Vice President-elect anymore. He was Vice President-elect when he made the statements, but at this point he is the Vice President.

She also did tell Mr. McGahn that General Flynn had been interviewed by the Bureau just earlier that week. I believe it was the day before. I believe it was on Wednesday that he was interviewed, by my recollection. And we also -- Mr. McGahn asked a variety of questions I can get into if you want, or not.

MR. SCHIFF: Yes, please.

MS. MCCORD: Okay. He asked how Mr. Flynn did and we -- or how General Flynn did, and we declined to answer that question. He asked if it would be okay to ask if General Flynn was under criminal investigation, and Ms. Yates said it would be okay to ask, but it would not be okay for us to answer that.

He asked if there were any constraints we were putting on their use of that information.

MR. SCHIFF: So I just want to make sure, so the White House counsel asked whether it'd be appropriate for them to inquire about whether someone in the White House was under investigation; and Ms. Yates informed the White House that's not an appropriate question for them to have answered?

MS. MCCORD: For us to answer. She is -- and I remember it just because it was sort of a memorable way she stated it, was that it would be okay for you to ask. It would not be okay for us to answer. And he did not press it at all.

[REDACTED]

MR. SCHIFF: And this would have been, if you know, prior to the President's asking Director Comey, or after the President's asking Director Comey to state publicly that he was not under investigation?

MR. GOWDY: Who is he?

MS. MCCORD: He, meaning the President, not under investigation?

MR. SCHIFF: Yeah.

MS. MCCORD: I think it's before that, but I'd have to be -- I'd have to refresh with that date. It had to be before that. If I'm recalling correctly, that was during -- no. I guess the President discussed it in that interview with Lester Holt, but I'm forgetting. I'm not recalling the date.

MR. SCHIFF: I think it was discussed multiple times, I guess, between the President and the director. But in any event, the White House counsel was informed it would not be appropriate for you to answer that question to him, let alone publicly.

MS. MCCORD: Yeah. I should clarify, he wasn't asking about any criminal investigation into anyone other than Flynn. He was asking would it be okay for me to ask if there's a -- if he's under -- he, General Flynn, was under criminal investigation. He didn't ask more broadly.

MR. SCHIFF: Correct. But the principle, I presume, would be the same?

MS. MCCORD: The principle would be the same. I just wanted to make sure I hadn't misled and suggested that he asked about the President, because he had not.

MR. SCHIFF: And I'm sorry, you were going to finish what questions he had for you.

MS. MCCORD: And there may have been others, but these are what I

recall he asked. You know, would it -- was there any restrictions on what they could do with this information, and Ms. Yates said, no, it wouldn't be right for us to come over and bring them this and tell them that they couldn't do something with it. We expected that they would do with it what they saw appropriate to do.

MR. SCHIFF: In terms of chronology, is this before or after the Ignatius article?

MS. MCCORD: This is after. So the Ignatius article is on the 13th. This is on the 25th or 26th. It's on, I think, the 26th, actually, a Thursday, now that I think more about it. And so then we left.

And the next morning, I got a call, I'm pretty sure, from Ms. Yates herself, direct on my line, I was at the office, saying that Mr. McGahn had called and asked if we could come back over. He had a few clarifying questions, and she wanted to make sure I would clear my schedule to go over.

And so I did, and went over with her again. And we went up to Mr. McGahn's office, and it was the same four people: Mr. McGahn, Mr. Burnham, myself, and Ms. Yates. And, you know, I didn't take notes at either one of these meetings, and so I have tried to figure out if I'm conflating things.

I honestly don't remember the second meeting being very much different than the first meeting. It seems like we pretty much went over -- we pretty much repeated the same things we talked about.

I had, I mean, just personally, the sense that it was pretty surprising to him to hear it the previous day, and he just had to process it, and just kind of wanted to hear again and get also some verification that they really could do what they wanted; you know, they could use the information that we provided, and we weren't restricting it.

MR. SCHIFF: Did he give you any indication on the second date that you had this conversation that he had communicated the information to the President?

MS. MCCORD: He did not.

MR. SCHIFF: Did he tell you anyone else he'd shared it with at the White House?

MS. MCCORD: He did not. In fact, I did not have the sense it had been shared because I felt like part of the reason he asked us to come again is to clarify that they could use the information.

MR. SCHIFF: And what would have been your next involvement with respect to General Flynn and this issue?

MS. MCCORD: So the next involvement was -- the next day was a Saturday, and I got an email at about 5:30 that evening. I saw it on my phone because I was out. My sister and brother-in-law had come to town, and we were going to see their -- my niece perform, and we were out for a very early dinner.

And my phone indicated I had an incoming email. And I looked at my phone, and the email said that it was from General Mike Flynn at his Executive Office of the President email address. That is the email address.

The body of the email said that it was from John Eisenberg. It said that he was writing to me as the deputy White House counsel for the National Security Council. He'd been asked to follow up with me regarding matters that I'd spoken to Don McGahn about, and he was asking if we could have a secure call the following morning. And then he signed it John Eisenberg.

So I was confused, because the email came from General Flynn's email address. I recall scrolling up and down several times just to make sure I was correct. And I did not want to respond directly to General Flynn because it

appeared that the email was not really from General Flynn.

So I contacted someone else I knew at the White House who had access to email addresses because I didn't have John Eisenberg's email address on my phone. And that -- I just asked, do you have an email address for John Eisenberg, and the person sent me the email address.

So I then wrote back an email to John Eisenberg at John Eisenberg's email address and said I was writing to him because I had received an email that came from General Flynn's address but appeared to be from him, and I wanted to make sure it hadn't been sent by mistake; and that I would be available to talk the following morning. If it needed to be a secure call, I would need to go into the office to take a secured call, but that I could do that if that's what he needed.

He wrote back right away from a John Eisenberg email address that -- thanking me. He said something like, Thank you for doing so, in other words, I think he meant write directly to him, and that maybe we could start by talking unsecure the next morning, and he'd follow my lead if there was a need for us to go into the office to do it secure.

MR. SCHIFF: Did he ever make -- clarify for you whether that prior email had actually come from him?

MS. MCCORD: So the next morning when we actually had a phone conversation he immediately said that he'd been in General Flynn's office working with General Flynn the previous day, meaning Saturday, because by now this conversation we're having is Sunday morning, and that he had left General Flynn's office to go back to his office.

And at some point in time, his assistant had come into his office with two cell phones, and that he must have -- it must have been his and General Flynn's. And

[REDACTED]

he must have picked up General Flynn's, and they had the same password, and he must have mistakenly sent me the email from General Flynn's cell phone.

MR. SCHIFF: So he said that the password for his phone was the same password as General Flynn's phone?

MS. MCCORD: That's what he said.

MR. SCHIFF: Did he tell you whether the email that he sent to you the previous day he had sent to you in the presence of General Flynn?

MS. MCCORD: He did not address that. My impression was it was not in the -- well, he did not say. I mean, the explanation was when he picked up the phone thereafter, he must have picked up General Flynn's phone, and their passwords are the same, and so he had mistakenly sent it to me from that phone.

MR. SCHIFF: And that email that came from General Flynn's account said what again?

MS. MCCORD: It said, you know, Dear, Mary, or Dear, Ms. McCord, I am the deputy White House counsel for national security. I've been asked to follow up with you regarding the matters you discussed with Don McGahn. Could we have a secure call tomorrow?

Now, I did know who John Eisenberg is because I had been attending Deputies Committee meetings on national security issues, well, for years, but since the new administration had come in, and he had been present at some of those deputies meetings on completely unrelated topics but in his role as legal adviser to the national security counsel. So I did know who he was. I was familiar with him.

MR. SCHIFF: So what happened the next day then?

MS. MCCORD: So after he explained that, I didn't push him on it. I didn't

[REDACTED]

[REDACTED]
push any further on the explanation. He then said that he wanted to know what they would need to do to [REDACTED] basis of Ms. Yates and me going to the White House.

And, remember, we're on unsecure cell phones, so that's why he didn't refer [REDACTED] I knew what he was talking about. And I said, well, that is something we contemplated. And we had actually, in fact -- I left this out, but Ms. Yates had also indicated to Mr. McGahn on either Thursday or Friday or both that we would also talk to the Bureau about providing access.

And so, I knew that that's what he was following up on, and I let John know that I would need to talk to the Bureau and make those arrangements. And I then called Ms. Yates on Sunday morning and told her that this inquiry had come in, and I also told her about the oddity of the email coming from General Flynn's account.

And the next morning, I did call the Bureau right away. Well, first I checked -- no, I called the Bureau right away to see if they could get the [REDACTED]

And they were able to accomplish that, got them into an office that -- because [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

[REDACTED] And that was Monday, January 30.

And so, I had talked to the deputy attorney general's staff who said that Ms. Yates was going to call back Mr. McGahn and let him know that we could make those available. That was my expectation.

So the next morning -- of course, Ms. Yates was fired that night, January 30. So the next morning I inquired with her staff if anyone knew whether she had actually connected with Mr. McGahn to let him know we'd make them available, and they said she had.

And so I then contacted Mr. Eisenberg and gave him the information of the contact Pete Strzok at the Bureau, told him [REDACTED] that he was interested in would be available that afternoon, and he should contact Mr. Strzok directly to make arrangements to come over.

I then followed up for an additional couple of days to make sure he'd been able to get access to what he needed to get access to. And as of Thursday morning -- he told me Wednesday he wasn't able to get over there. And as of Thursday morning, he said he thought he would be able to get over to the Bureau that day, and then that is the last I heard.

[REDACTED] Five minutes.

MR. SCHIFF: I apologize to my colleagues. I didn't mean to take this much time.

Did Mr. Eisenberg inform you whether he intended to [REDACTED]

[REDACTED]
MS. MCCORD: He did not.

MR. SCHIFF: Did you ever find out whether he did?

MS. MCCORD: I did not.

MR. SCHIFF: And what involvement did you have after that in this issue?

MS. MCCORD: No real -- no personal involvement.

MR. SCHIFF: Do you know what course either this issue or the investigation of General Flynn took after that?

[REDACTED]

MS. MCCORD: So, I mean -- as we would get regularly briefed on the various strands of the counterintelligence investigation, that included, you know, additional work with respect -- or additional investigation with respect to Mr. Flynn's involvement.

And ongoing at the same time was Mr. Flynn was around the same timeframe filing, you know, registration under FARA belatedly, again, not related to Russia, but that provided some avenues of, you know, inquiry.

MR. SCHIFF: Did you have any involvement in the facts that led up to the discovery of the discussions that General Flynn, Jared Kushner, and the Russian ambassador had?

MS. MCCORD: I did not.

MR. SCHIFF: Did that take place while you were there?

MS. MCCORD: It did not. I learned about that in June or July, whenever that story broke. That was the first I knew about it.

MR. SCHIFF: And when did you leave the Department?

MS. MCCORD: May 12.

MR. SCHIFF: The Flynn investigation was open when? Do you know?

MS. MCCORD: So when Mr. McCabe first called me to tell me about the [REDACTED]

And so -- but I was not aware of that until I learned from Mr. McCabe about [REDACTED]

MR. SCHIFF: And did Mr. McCabe tell you what the basis was for the [REDACTED]

[REDACTED] General Flynn?

MS. MCCORD: I don't remember if this came from Mr. McCabe or later in a briefing from Mr. Priestap or others, but I believe the basis for that had been, you know, [REDACTED]

MR. SCHIFF: Mr. Himes.

MR. HIMES: How much time do we have?

[REDACTED] Two minutes, sir.

MR. HIMES: All right. In the spirit of that, why don't we pass, and if we want to take a break, that's fine.

MR. ROONEY: Do you want a break?

MS. MCCORD: Yeah.

MR. PROBER: We'll take a couple minutes.

[Recess.]

MR. GOWDY: Ms. McCord, the email that you were making reference to, Mr. Eisenberg, Mr. Schiff was asking you about, do you have access to that still, or can you direct us where we could go to gain access to that email exchange?

MS. MCCORD: So it should be in -- I mean, it is a Justice Department unclassified email, so to the extent you have had access to Justice Department emails, it should be in that collection. But I also do have access to it that we can make -- provide to you.

MR. PROBER: Yeah. I am happy to sort of follow up with the committee on that and have a discussion.

[REDACTED], based on our prior discussion, I had mentioned to you that she [REDACTED]

[REDACTED]
[REDACTED]
doesn't have anything that wouldn't be on DOJ servers, which is entirely accurate. But there's a small group of documents that she had printed out and is in possession of, which, again, would be on DOJ's servers, but I am happy to talk to you about this.

[REDACTED] I think Mr. Gowdy's request is if you could just provide those documents.

MR. GOWDY: Pardon me?

MS. MCCORD: The emails.

MR. GOWDY: Thank you.

MR. CONAWAY: Could I ask one real quick. So the cell phones that these two gentlemen were using, they were the brand new issued government cell phones or --

MS. MCCORD: I don't know.

MR. CONAWAY: They didn't look like yours?

MS. MCCORD: I didn't see them. This was a phone conversation where he explained to me.

MR. CONAWAY: Oh, okay. Gotcha. Thank you.

MR. ROONEY: I think that we can safely assume that the incoming NSA Director probably shouldn't have the same password as anybody else, but that's just my commentary.

I want to ask you a couple questions that are kind of --

MR. SCHIFF: Jim was suggesting everyone has the same password. It's MAGA. Probably not very secure, but --

MR. ROONEY: It might be.

MR. SCHIFF: You never know.

[REDACTED]

[REDACTED]

MR. PROBER: It's easy to remember.

MR. ROONEY: A couple follow-up questions from Trey and then I am just going to ask you a few questions of my own, if I might.

With regard to Mr. Steele and the FISA application, do you know if it made it through the FISA court unscathed, or do you know if it was rejected at any point, and if so, why?

MS. MCCORD: I don't have any reason to believe it was rejected at any point.

MR. ROONEY: Do you know if there was ever any problems with it?

MS. MCCORD: I don't believe there were ever any problems with it.

MR. ROONEY: Would that application -- do you know or think that that application would have had probable cause to authorize surveillance if you removed the information provided from Mr. Steele?

MS. MCCORD: I would have to see the application again to opine on that. I should also just be clear that when I say I don't believe it ever was turned down or was ever -- had to have modifications, I say that based on I certainly don't recall that, and it's something that I feel pretty confident Mr. Evans would have told me. But it's possible I am not recalling or that somebody didn't tell me. It's just I don't recall there being any issues with the court on that application.

MR. ROONEY: Are you aware of any DOJ or FBI employee who met or talked with Mr. Steele, either in person or over electronic means?

MS. MCCORD: Well, I know that FBI did talk to Mr. Steele because he provided information, but I don't know which employee, if that's your question.

MR. ROONEY: Right. Yeah. Well, you'd said before that Mr. Steele had been considered, I think, by the Bureau as a credible source historically. And I

[REDACTED]

[REDACTED]

don't know if Mr. Gowdy already asked this, but were you or the Bureau, were you aware, retrospectively, that he was being employed at that point by a private firm?

MS. MCCORD: What I became aware of was that this research that he was providing to the Bureau he had obtained in the course of his employment, private employment for the purpose of doing opposition research. Whether he was still under contract with that private entity at the time, which I, at some point, learned was Fusion GPS, but certainly not at the beginning, whether he was still employed by that entity at the time he brought the information to the Bureau, I don't know.

MR. ROONEY: So they are relying on this guy based on, I think you said, you know, their relationship prior. Do you have any knowledge as to what that -- why that relationship was seen as something that they could rely on this guy historically? Like why was he a reliable source, in your opinion?

MS. MCCORD: Well, my recollection is that -- and this would have been included in the affidavit -- is that he had provided information previously which had been verified, and so that's pretty typical in law enforcement for, you know, finding somebody to be a credible source.

MR. ROONEY: And was this -- I mean, as far as you know, was this information verified as well for this occasion?

MS. MCCORD: Well, there was a variety of information that Mr. Steele provided [REDACTED]

[REDACTED] And it would -- and that -- you know, that's information that was included in the affidavit. Like they are very explicit when it's an unverified source or unverified reporting versus when it --

MR. ROONEY: Did anybody raise any red flags about this information like

[REDACTED]

before it was going to FISA?

MS. MCCORD: Well, I don't know if you would call this a red flag. I know that Mr. Evans and I discussed making sure that we -- that the application would be very clear to the court about what's, you know -- which sources are sources with whom the FBI has, you know, personal knowledge and personal experience, direct experience, and which are sub sources that the FBI doesn't have its own, you know, personal knowledge of, and can't independently, you know, verify the veracity of.

MR. ROONEY: Okay. I want to switch gears, because one of the prongs of our --

MS. MCCORD: And I am sorry. I don't mean to interrupt you --

MR. ROONEY: No. Go ahead.

MS. MCCORD: -- but I also -- I think I indicated maybe earlier that I read a draft of the affidavit. It was modified -- and we had some of these discussions we are talking about, and it was modified thereafter, not as a result of court, but just our own internal DOJ discussions. But I never read the final draft that went to the -- that went for approval.

MR. ROONEY: One of our focuses on this investigation in our role as oversight for the Intelligence Community is to try to figure out how we respond to the Russian active measures in the last election cycle. What role, if any, did you have in advising the prior administration on how to respond to Russian -- the Russian active measure campaign?

MS. MCCORD: So I began going to, you know, deputies committee meetings, certainly through the fall as the discussions were taking place among the National Security Council deputies about what would be appropriate

[REDACTED]

responses.

[REDACTED]

MR. ROONEY: Okay. When did the FBI first approach the National Security Division to open a criminal investigation regarding Russia and the 2016 elections? Like was there one thing that like sort of kicked that off that started that?

MS. MCCORD: There's really not. You know, the -- after the incident -- or not incident. After knowledge of the phone conversations between General Flynn and Ambassador Kislyak occurred, there was certainly discussion of, you know, that violating, you know, a criminal statute.

And, you know, we had some discussions about how we -- you know, this is

[REDACTED]

[REDACTED]

a statute that hadn't been used ever, you know, in 200 years on the books, and that we imagined that in many incoming administrations, it's probably pretty common for incoming officials to reach out to who their counterparts are in advance of the transition to just sort of say we want to start developing a relationship.

So I think a lot of us were -- when I say "us," I am talking about like senior DOJ-level people talking with senior FBI people, sort of hesitant to think -- I mean, certainly it formed the basis of the about to do a criminal investigation. There's no question about that. It would appear to violate that statute. But we weren't sure that it would ever be something as a matter of discretion that a prosecutor would determine to indict.

[REDACTED] Five.

MS. MCCORD: And the reason I focus on this is just because to the extent there was ever time we started talking about a criminal investigation, the only thing I can recall specific timing was is with regard to General Flynn and the fact that that -- those conversations certainly did seem to violate this statute.

And if I could just clarify one -- my previous response on the sanctions package.

[REDACTED]

MR. ROONEY: With regard to all that -- the active measures that you all were tracking, and even leading up to the Flynn phone call, was there any evidence that you saw during your time in government that this transcended over

[REDACTED]

[REDACTED]

to actual coordination or conspiracy, or any kind of collusion with the Russian Government and the Trump campaign in a way -- and this might be out of your lane -- in a way to assist the Trump campaign from winning the election at the -- obviously at the expense of the Clinton campaign?

MS. MCCORD: So I think you are -- I want to make sure I understand the question. Certainly the Intelligence Community assessed that that was the goal of the Russian establishment was to influence the campaign and through a whole variety of ways, including the cyber intrusions.

The investigation into whether there was any conspiracy by any members of the Trump campaign is what was ongoing when I left and certainly wasn't at a point then to be ready to be charged as --

MR. ROONEY: In May of this year?

MS. MCCORD: [No verbal response.]

MR. ROONEY: Do you think it's possible that with all the active measures that we have seen, that all those things -- if all those things are true, at the same time there was also no actual coordination with the Trump campaign to -- and the Russian Government to collaborate, in some nefarious way, to affect the outcome of the election against Mrs. Clinton?

Do you think that both those things could be true, that they were taking -- using RT and Facebook ads and whatever else they were doing as far as propaganda, but at the same time, they weren't actually coordinating with the Trump campaign?

MS. MCCORD: That could be true. It could also be true that there was coordination. That's what the investigation is about.

MR. ROONEY: That's fine.

[REDACTED]

[REDACTED] One minute.

MR. GOWDY: Real quickly, I will try to do this in 1 minute. I will go back to the courtroom days. You may have an informant that's working off charges; that's kind of one concern in front of the jury. You have got an informant who's being paid; that's another concern in front of a jury. And then you have got these rare informants that just want to be solid citizens, and they come forward, and that's not that much of a concern in front of a jury.

Assume information can be correct or incorrect regardless of who the source is. An enemy could provide accurate information; a friend could lie about you. So those two aren't super-related.

With respect to Steele, I am trying to figure out whether the Bureau -- whether he approached the Bureau as a former informant, as a concerned citizen, or as someone who worked for a private entity called Fusion GPS. Do you know how the Bureau took that initial call from Steele?

MS. MCCORD: So you would have to ask the Bureau that. All I can tell you is the way it was conveyed to me, it was a concerned citizen who knew who to reach out to because he had had a private -- a previous, you know, relationship with the Bureau. It wasn't Fusion GPS has asked me to pass it along or anything remotely like that, at least as conveyed to me.

MR. GOWDY: All right. I don't want to intrude on their time. This is the last question.

Who would the Bureau -- understanding you would have been second or third removed, who at the Bureau could answer that question of how Steele first manifests himself to the Bureau in this fact pattern?

MS. MCCORD: Yeah. I would think that Mr. Priestap would be able to

[REDACTED]

[REDACTED]

answer that, and if he couldn't, he would certainly know who. I mean, I don't know that he was the one who was called. I don't know who was the one that was contacted, but he would know.

MR. GOWDY: Thank you.

MR. HIMES: Thank you.

Thank you, Ms. McCord, for being here.

I want to start with a question. Ms. Yates testified in front of the Senate about the second meeting that you were talking about before meeting with Don McGahn on January 27. She remembered in testimony to the Senate that he brought up four points: Whether the information about General Flynn triggered any statute; asked why it was in DOJ's interest whether one member of the White House might lie to another; third, whether any action the White House would take would interfere with the investigation of General Flynn; and fourth, whether they could get access to the underlying information.

I wonder -- that's her testimony. Does that refresh your memory of that meeting, and is there anything you might add to that?

MS. MCCORD: Well, those are all things within the scope of what I hope I had conveyed earlier. And -- but I just don't -- I just -- to my mind, it wasn't that much different than the previous meeting; in other words, we went over really those four subjects the previous meeting as well.

MR. HIMES: Okay. Okay. Let me shift gears here. We are getting into the process by which the investigation was established, by which people came forward to the investigation.

So just for the benefit of those of us and the readers ultimately of our report who are not blessed with law degrees, I want to do a bunch of just sort of basic

[REDACTED]

foundational stuff around the process to both establish investigations as well as the process associated with the FISA process. So maybe we can move relatively quickly through these questions.

As a general matter, what criteria or authorities apply to the FBI's decision to open a counterintelligence investigation?

MS. MCCORD: The Director has a -- their own guidelines for when they can open a counterintelligence investigation.

MR. HIMES: And are these the same as with criminal or other investigations?

MS. MCCORD: They are different types of guidelines.

MR. HIMES: Okay. Are investigations -- when we use the word "investigations," are they the same as assessments or preliminary investigations, and if not, what are the differences?

MS. MCCORD: So I am not an expert, on the DIOG, and you should probably talk to general counsel for the FBI. But when I think of assessments and preliminary investigations and full investigations, I think of that in the context of criminal investigations as opposed to CI investigations.

I actually can't tell you whether they have the three different categories for CI investigations that aren't criminal, because my experience with CI investigations are these are opened up for the long term. They are opened up to be long-term intelligence-gathering investigations.

MR. HIMES: In general, if the FBI opens a counterintelligence investigation, is it fair to say that it has found at least some credible reason to proceed?

MS. MCCORD: Yes.

[REDACTED]

MR. HIMES: Okay.

MS. MCCORD: There still would be criteria for opening it. It's just I am not sure it's staggered the same way it is on the criminal side.

MR. HIMES: Okay. How much does the FBI have to know for certain about a counterintelligence threat before opening an investigation?

MS. MCCORD: I don't know. I don't know exactly what their criteria for openings says. I mean, certainly by the time you seek anything like a FISA, you have very specific authorities and standards that have to be met.

MR. HIMES: Yeah. We will come to that hopefully.

Who at FBI would make a decision -- and in this particular case, [REDACTED]

[REDACTED] who at FBI would have made the decision to commence a CI investigation?

MS. MCCORD: So I don't know for sure if it -- so I probably shouldn't opine, except that if, you know, there are a lot of different squads responsible for different counterintelligence threats at the Bureau. And those agents assigned to that particular threat monitor very closely what's happening in that area. And if they think they need to open something, I think they would push that up to their superiors to open them.

And that's not always something that would be shared with DOJ's lawyers and National Security Division, unlike criminal investigations, where you would have interactivity with prosecutors pretty early. That's not necessarily the case at the very -- at the beginning of a counterintelligence investigation.

MR. HIMES: Okay. Thank you.

Do either FBI or DOJ authorities allow either the FBI or the DOJ to take political considerations or the preference of a politician, the preference of a party

[REDACTED]

[REDACTED]

into account in deciding whether to undertake an investigation?

MS. MCCORD: No.

MR. HIMES: Okay. During your 28-year career at DOJ, are you aware of FBI or DOJ bringing a counterintelligence investigation in order to damage or undercut a political candidate or opponent?

MS. MCCORD: No.

MR. HIMES: [REDACTED]

[REDACTED]

MS. MCCORD: I can't answer that.

MR. HIMES: Okay. Is it at least possible that a counterintelligence -- that counterintelligence information could come from a biased source, as is sort of to what Mr. Gowdy was alluding to, someone who has been paid off and still be reliable?

MS. MCCORD: Yes, of course.

MR. HIMES: Okay. Can you give me an example of that?

MS. MCCORD: On an intelligence investigation? I mean, I can't give you a specific example. I can certainly tell you in years of prosecuting that in prosecuting criminal cases, oftentimes our -- you know, the sources that prosecutors rely on have got some baggage, either bias-related or otherwise, and you deal with that.

MR. HIMES: So in opting to begin a CI investigation, just about beginning an investigation, is it common for the FBI to scrutinize the sources of its information?

MS. MCCORD: Yes.

MR. HIMES: And just to be a little bit repetitive to a previous question,

[REDACTED]

must the FBI, to begin a CI investigation, corroborate all of its information before an investigation begins?

MS. MCCORD: I would assume not. Again, I don't know exactly what the DIOG says on opening a CI investigation, and I apologize for that. But I didn't -- I was not ever part of the initial decisions to open a CI investigation, and that's not something that required any approval from DOJ.

MR. HIMES: Okay. Did anyone at NSD or you personally play a role in the decision to begin the FBI's CI investigation into Russian meddling and related issues in the summer of 2016?

MS. MCCORD: Not me, and no one at DOJ that I am aware of.

MR. HIMES: Okay.

MS. MCCORD: Now -- I am sorry. On the cyber side, when the intrusions became known, I don't know that there was any direction, because it was clear, you know, everyone at the Bureau, at DOJ, I mean, it was obvious that was going to be investigated. It was -- it was what appeared to be a nation state-sponsored cyber attack, and those are things that we investigate very readily.

My answer no was with respect to the other CI investigations of the individuals that I had discussed earlier today. I am not aware of anyone at DOJ directing or asking for those to be open.

MR. HIMES: Okay. Let me push you a little bit on an answer you gave earlier to the question as to the role that the Steele information played in the investigation. And do I have that right? Was the Steele information, him coming forward, was that important to the start of the investigation?

MS. MCCORD: My understanding from the Bureau is that, yes, that was one piece -- well, actually, I don't know the timing of what came first.

MR. HIMES: I guess what I am asking is, because I want to be clear here, you had talked about more than two sentences with respect to the FISA application.

MS. MCCORD: Yeah. That's separate.

MR. HIMES: So I am asking about the origination --

MS. MCCORD: Right.

MR. HIMES: -- of the CI investigation.

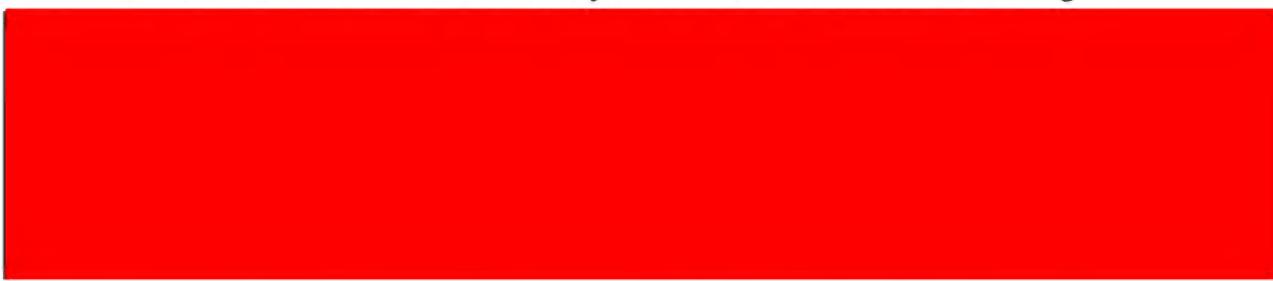
MS. MCCORD: Right. I believe there was other information that came



MR. HIMES: Can you be more detailed on that other information?

MS. MCCORD: The problem is, I don't have great recollection about it, and I worry that I will conflate things I have read in news reporting with what I actually knew. And I just don't want to do that.

I recall -- what I can -- what I tell you that I recall is information being



But I don't want to get any more specific because I just worry, in the passage of more than a year, that I will conflate public reporting with what I knew.

MR. HIMES: Okay. Let's shift now to the FISA application process, which we have been talking a little bit about. And let me ask a few questions about the process by which an application is submitted under title I of FISA.

Briefly, can you tell me what title I of FISA requires?



[REDACTED]

MS. MCCORD: Well, it requires that the target be an agent of a foreign power, and that there be probable cause that the target is an agent of a foreign power. And so -- go ahead.

MR. HIMES: Okay. Is it also true that a FISA matter cannot ever be initiated solely on the basis of First Amendment activities?

MS. MCCORD: That's true.

MR. HIMES: Okay. So if the government simply thinks a U.S. person's associations are sketchy, the government cannot use that alone as the basis to conduct a FISA electronic surveillance?

MS. MCCORD: Yes. Sketchy wouldn't be a criteria in the statute.

MR. HIMES: So can you just briefly describe your overall experience at NSD with the FISA process?

MS. MCCORD: So, you know, it's probably the area of NSD that I was the least involved with, because I was not a person with authority to sign FISAs. And Stu Evans, who'd been in the Office of Intelligence for many, many years, was so expert on this. I deferred a lot to him.

I was much more involved with our CTS and CES prosecutions and our law and policy piece and some of the National Security Council pieces, just because that was more in my area of expertise, frankly.

MR. HIMES: Okay. That said, you know, based on the experience that you do have, let me just ask a couple of questions around your view of the rigor involved in this process, starting with how closely do FBI and DOJ review assertions of fact in a FISA application before they take that application to the court?

MS. MCCORD: Well, I mean, quite thoroughly. It's -- like I said, when the

[REDACTED]

FBI wants to seek a FISA, they will send over, you know, a preliminary affidavit to an attorney in the Office of Intelligence, and that begins a process that sometimes can go on for months to get to a point where the attorney has a comfort level, and the agent, that the information is reliable and it supports probable cause.

MR. HIMES: Okay. Can you compare how demanding that review is, say, relative to something we may be more familiar with, the preparation of a, you know, wiretap application in a State criminal proceeding?

MS. MCCORD: I would say it's very comparable.

MR. HIMES: Okay. Are there multiple layers of review of a FISA application before it's submitted to the court?

MS. MCCORD: Yes, there are.

MR. HIMES: Can you describe those layers?

MS. MCCORD: So they are -- and I may leave a layer out, to be honest with you, but the attorney in the Office of Intelligence would complete the application. It would be submitted to that person's supervisor; I think then yet another supervisor before it would come across the deputy AAG's desk; and then, of course, it goes to whomever is signing it, whether it's the AAG, the deputy attorney general, or the attorney general.

MR. HIMES: So the process until it gets to the deputy AG or other political appointees is conducted largely or exclusively by professional civil servants?

MS. MCCORD: Yes, exclusively.

MR. HIMES: Exclusively.

MS. MCCORD: In fact, by -- I think it's by statute, that position of deputy AAG over Office of Intelligence must be a career. Most of the other deputy AAG positions and principal deputy can be political positions, but not that one.

MR. HIMES: Okay. To the extent that you can characterize it, how long would it typically take to prepare a typical title I FISA application?

MS. MCCORD: Mr. Evans would be better able to answer that, so I don't think I can say typical. All I know is it's not a quick process.

MR. HIMES: Are you familiar with --

MS. MCCORD: Now, excuse -- let me make a caveat.

MR. HIMES: Yeah.

MS. MCCORD: [REDACTED]

[REDACTED]

MR. HIMES: Okay. But these were not employed for the FISA application we are talking about here with respect to Mr. Page?

MS. MCCORD: No. No. No. That's almost always terrorism, counterterrorism.

MR. HIMES: Yeah. Are you familiar with the FBI so-called "woods" procedures for FISA applications?

MS. MCCORD: Familiar, but not -- it's not something I have spent a lot of time with.

MR. HIMES: Under these procedures, can the FBI base a FISA application on completely unverified allegations?

MS. MCCORD: No.

MR. HIMES: Okay. What happens if the FBI or DOJ makes an error in a

FISA application? Will the court get involved?

MS. MCCORD: Yes, absolutely. I mean, we have a very rigorous -- we. I am not there anymore. NSD has a very rigorous oversight process, and any time the oversight process -- through the oversight process NSD becomes aware of any type of mistake, it immediately advises the court about that, and sometimes, you know, moves to remedy it, however, depending on what type of mistake they have found. And I think the court has, I think, become pretty comfortable over the last number of years that it can trust that NSD will advise about [REDACTED]. One minute, Mr. Himes.

MR. HIMES: Okay. Thank you.

So I read a piece by a former FBI agent that described the FISA drafting process -- approval process before court submission. He called it extreme vetting. Does that sound about right to you?

MS. MCCORD: That sounds right. That's good.

MR. HIMES: Okay. A common criticism of FISA is the court rarely rejects applications outright, but instead asks for more information and revisions from the government. Of course, the ultimate approval rate is actually -- actually is fairly high, but my understanding is that that's because there is a very deep iterative process before a final determination is made. Does that sound right to you?

MS. MCCORD: There is with some, but not others. As I indicated earlier, I think with some, particularly at the staff level, there's an iterative process, but that's not the case for all FISAs.

MR. HIMES: Last question: How, if at all, would the association of a target with a prominent presidential campaign affect the preparation of a FISA application?

[REDACTED]

MS. MCCORD: So that would be considered a very sensitive circumstance, and that would mean it would get extra vetting and more reviews. For example, even though my role was never to actually sign these, I only, you know -- I would occasionally be asked to read one and consult on one, and that was, you know, usually either because it was novel, or particularly sensitive it, and didn't happen that often but certainly in the case of Carter Page it did happen.

[1:20 p.m.]

MR. HIMES: It did. So that additional scrutiny you referred to occurred in this case?

MS. MCCORD: Uh-huh.

MR. HIMES: Okay. All right. Thank you.

I yield back.

MR. GOWDY: Ms. McCord, I think they're going to call votes, so this will probably be the last time I will have a chance to ask you questions. I want to start again the same way I did last time. Thank you for being here and thank you for your service to our country in a very important and difficult job.

I want to pick up where my friend Mr. Himes left off, but I want you to imagine you're in a courtroom and you are either examining or cross-examining Mr. Steele. All right? I'll let you pick. You're either the prosecutor and you want to take the sting out of it before the defense attorney does it or you're being paid handsomely as a defense attorney.

Would you ask Mr. Steele who his employer was?

MS. MCCORD: Yes.

MR. GOWDY: He's an informant.

Would you ask him whether he had a pecuniary interest in the outcome?

MS. MCCORD: Yes.

MR. GOWDY: Would you ask him -- and this is separate -- how he was being compensated for his time either that day or through the course of the investigation?

MS. MCCORD: Yes.

MR. GOWDY: Would you inquire as to what motive he may have had to

[REDACTED]

provide the information that he was provided?

MS. MCCORD: Yes.

MR. GOWDY: Would you inquire as to whether or not he was associated with any other parties that may also be principals in that ongoing investigation or prosecution?

MS. MCCORD: Yes, probably, depending on the facts.

MR. GOWDY: I would ask all of those things, too. But let me ask you, why with you do that? Why would you ask those series of questions about motive and bias and opportunity and all that stuff? Why would you do that?

MS. MCCORD: Because it's important for, in the case of a courtroom, which is what the premise of your question was, it is important for the fact-finder to know. And if I was the prosecutor, which I always was, I did not – I did want to take the sting out of that. I wanted to be able to characterize it in a way, if I had found and my investigators had found a particular witness to be credible and we'd overcome whatever biases or other Giglio information might exist, then I would want the opportunity to explain that to the jury and to the fact-finder.

And so, too, to the extent that you're making an analogy to a FISA, the idea, just like in a search warrant application or in a Title III application, is to be as candid with the court as possible about, you know, where there could be biases.

MR. GOWDY: I wasn't making the analogy yet. We're still back in the courtroom.

MS. MCCORD: I'm getting ahead of you.

MR. GOWDY: It's relevant and it's important.

MS. MCCORD: Uh-huh.

MR. GOWDY: Always the same thing, but in this case it is both relevant

[REDACTED]

and important. It goes directly to whether or not the fact-finder can believe what is coming out of the mouth of the witness.

MS. MCCORD: I agree.

MR. GOWDY: So how much of that information was included about Mr. Steele in the FISA application?

MS. MCCORD: Like I said, I have not read that for over a year, so I cannot tell you how much. I know everything we knew to include, at least that I was aware of, was included.

MR. GOWDY: When you say "we," does that include you and the Bureau or just main Justice?

MS. MCCORD: Well, I can't speak for anything the Bureau knew that wasn't shared with main Justice. So I can only speak for what information we were able to glean having asked additional questions and made sure that anything we had was put in there.

MR. GOWDY: I'm sure no one in the room would do it, but to the extent there may be an outlier somewhere that is critical of Republicans for asking questions about the dossier and how it may have come into the hands of the Bureau, are these irrelevant questions for wanting to ask the Bureau: How did this witness come forward? How did you vet the sourcing and the subsourcing? Are those irrelevant, unimportant questions to inquire?

MS. MCCORD: I don't think it's irrelevant or unimportant. I think that when the affidavit was presented to DOJ, DOJ asked questions about the source and the subsource and the subsourcing and tried to convey as candidly as possible what information we had at that time.

I would point out that it is a probable cause determination and not a beyond

a reasonable doubt determination like you would see in a court of law in a criminal case. And I, you know --

MR. GOWDY: I'm with you. And on the counterintelligence part, that's important, because it may not ever result in a prosecution.

MS. MCCORD: That's right.

MR. GOWDY: Most criminal inquiries at some point the purpose might be to move it beyond a reasonable doubt. So if all you've got is probable cause, that ain't much when you're going have a little higher burden in a couple of months.

So I'm with you, probable cause is the bare minimum for an arrest warrant. My guess is you had lots of conversations with FBI agents that they had probable cause, but they did not have enough beyond a reasonable doubt and therefore you may have declined the case, even though they had probable cause. Has that ever happened?

MS. MCCORD: That wasn't presented at all when we were talking about Carter Page. There was never a discussion at the time of the FISA about, you know, it was intelligence collection.

MR. GOWDY: Right. It wasn't calculated towards a criminal prosecution.

MS. MCCORD: Yes. I just want to be clear on that.

MR. GOWDY: Right. No, I was with you on that. But to the extent there is a difference in how probable cause would play into those, one calculated towards investigation another towards a prosecution where the burden changes.

MS. MCCORD: Yeah, that's right.

MR. GOWDY: That's all I have unless Mr. Rooney or [redacted] or the chairman have something.

MR. GOWDY: Thank you for coming.

[REDACTED]

MS. MCCORD: You're welcome.

MR. SWALWELL: Thank you, Ms. McCord, for your service and for coming in today.

When you left in May, what was the status of General Flynn's case? Was it open or closed?

MS. MCCORD: It was open.

MR. SWALWELL: How about Mr. Manafort's.

MS. MCCORD: Open.

MR. SWALWELL: How about Mr. Page?

MS. MCCORD: Open.

MR. SWALWELL: And we know now with Mr. Papadopoulos.

In your 28 years of experience at the Department of Justice, particularly in the National Security Division, have you ever seen a Presidential campaign with so many contacts with a foreign adversary? Have you ever seen that before? Has that ever been presented to you before?

MS. MCCORD: I was not at any NSD during any other campaign, so I really can't answer. And just to be clear, just because this is recorded, I think I began with DOJ in 1994, so that would be like 23 years. I have 27 years in government, but not all of it at DOJ.

MR. SWALWELL: Was it ever discussed to give the Trump campaign a defensive briefing, to alert them that people on their team had these contacts, like Mr. Papadopoulos or Mr. Page?

MS. MCCORD: So during the -- if we're talking about like sort of during the fall, that was never discussed with me. There were other defensive briefings that were provided with respect -- not with respect to Russia at all, but with respect to a

[REDACTED]

[REDACTED]

few people that -- some other involvement not related to Russia that I can remember discussing with the Bureau.

MR. SWALWELL: At any point during your time at DOJ, during the Presidential campaigns, both primary and general, did anybody, to your knowledge, come forward to the FBI or DOJ and say, we have seen these contacts or we have been approached by Russians with information on hacked emails? Does that question make sense? Other than an FBI --

MS. MCCORD: Other than the briefings we've talked about?

MR. SWALWELL: -- or other than a law enforcement official, did any citizen or --

MS. MCCORD: Not that I'm aware of.

MR. SWALWELL: And what I'm referring to is evidence has come out and Mr. Papadopoulos's stipulation of facts said that, you know, he was approached about dirt on Secretary Clinton. You've seen the emails with Don Jr. and Kushner and Manafort where they were approached about dirt on Secretary Clinton.

Did anyone proactively, to your knowledge, go to the FBI or DOJ saying that they were contacted about Russians having information on the Secretary? Other than Mr. Steele.

MS. MCCORD: Yeah, right. I'm assuming other than Mr. Steele.

Not me, not anybody at DOJ. I do recall -- and I don't know if this person came forward independently or if this is somebody that the Bureau reached out to talk to. And it may -- and I've been wondering since I read some of the documents about Mr. Papadopoulos's case, this professor. I believe there is a professor that the Bureau talked with. Again, I don't know if that's a professor who had come to them independently or they went to him and I don't know if it is

[REDACTED]

[REDACTED]

the same professor. But I do have a recollection.

MR. SWALWELL: It looks like we are wrapping this up and I don't think we're going to come back. Is there anything, Ms. McCord, that you would have asked with respect to what you did that did not come up that you'd like to share with us?

MS. MCCORD: Can you just give me a moment?

[Discussion off the record.]

MS. MCCORD: I don't think so. I think within the scope of what I understand the interest here to be, I think we've hit pretty much all of the salient points.

MR. SWALWELL: Okay. And back to -- on Mr. Steele, you knew him to be a British -- a former British intelligence officer?

MS. MCCORD: So I believe it was explained to me that he had worked also with the Bureau formerly as well, but was a British intelligence officer.

MR. SWALWELL: And finally, attempt is also a crime. Is that right? If you attempt to commit a crime, that itself, even if the crime is not completed, is a crime in the Federal system.

MS. MCCORD: Yes.

MR. SWALWELL: Thank you. Nothing further.

MR. ROONEY: Thank you, Ms. McCord. That concludes our interview and we are adjourned.

MS. MCCORD: Thank you.

[Whereupon, at 1:34 p.m., the interview was concluded.]

[REDACTED]

